



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD)No.4252 of 2015

A.Pichai

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep.by Principal Secretary,
Finance (PC) Department,
Fort St.George,
Chennai - 600 009.

2.The Director of Collegiate Education,
College Road,
Nungambakkam,
Chennai - 600 006.

3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai - 625 020.

4.Viveknanda College,
Rep.by its Secretary,
Thiruvedagam West Post,
Madurai District.

5.The Accountant General,
(Accounts and Entitlements)
No.361, Anna Salai,
Chennai - 600 018.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to impugned order passed by the 5th respondent in No.AG (A&E)/PEN P22/4/REV/22201568/CVP, dated 27.09.2013, quash the same in so far as disallowing a portion of petitioner's last drawn salary for calculating pension is concerned and direct the 5th respondent to calculate and disburse pension as per the additional fitment table No.5 annexed with the Letter No.51082/Pay Cell/2010-1, dated 15.09.2010 issued by the 1st respondent.

For Petitioner : Mr.R.Subramanian

For Respondents : Mr.S.Dhayalan
(R1 to R3) Govt.Advocate

For Respondent-5 : Mr.P.Gunasekaran

**ORDER**

This Writ Petition is filed to quash the impugned order passed by the fifth respondent in No.AG (A&E)/PEN P22/4/REV/22201568/CVP, dated 27.09.2013, insofar as disallowing a portion of petitioner's last drawn salary for calculating pension is concerned and direct the fifth respondent to calculate and disburse pension as per the additional figment table No.5 annex with the Letter No.51082/Pay Cell/2010-1, dated 15.09.2010 issued by the 1st respondent.

2.The grievance in nutshell put forth by the petitioner in the writ petition is that he is entitled for the Grade Pay attached to the post of Special Grade Laboratory Assistant with reference to the Government Order passed in G.O.Ms.No.63 as well as the consequential clarifications issued by the Government in letter, dated 23.05.2011.

3.Admittedly, the writ petitioner was appointed as Laboratory Assistant in the Department of Collegiate Education. There is no promotional avenue available for the post of Laboratory Assistants. Thus, the Selection Grade and Special Grade was granted to the employees working in the post of Laboratory Assistants by fixing the next higher scale of pay applicable to the promotional post.

4.The learned counsel for the petitioner mainly contended that as per the Government Order passed in G.O.Ms.No.63, Finance Department, dated 26.02.2011, the Scale of Pay fixed for the Laboratory Assistant was revised. Consequently, a clarification was issued in letter, dated 23.05.2011, granting the Selection Grade and Special Grade of Pay and accordingly, the Special Grade of Pay fixed for the post of Laboratory Assistant was Rs.9,300-34,800+Grade pay of Rs.4,400/-. The petitioner is entitled for the said Grade Pay and therefore, the impugned order passed imposing recovery is also irregular. The learned counsel for the petitioner reiterated that as per the clarification, the Special Grade Pay is to be granted to the writ petitioner and accordingly, the further revision is also to be effected.

5.The learned Government Advocate appearing on behalf of the respondents 1 to 3 objected to the contentions of the petitioner by stating that the petitioner is not working in the cadre of Laboratory Assistant as of now. The petitioner was promoted either by way of promotion or through transfer of service to the higher post of Junior Assistant and Assistant and queue person as Superintendent. The promotions were granted prior to the crucial date of 01.01.2006. In other words, even before the implementation of pay commission on 01.01.2006, the petitioner was either promoted or appointed by way of transfer of service to the post of Junior Assistant/Typist and he was further promoted to the post of Assistant and to the post of Superintendent. The petitioner is now receiving the benefits attached to the post of Junior



Assistans/Typist, Assistant and to the post of Superintendent respectively. Therefore, many comparisons made out by the petitioner to grant grade pay attached to the post of Laboratory Assistant itself are untenable.

6.The learned Government Advocate for the respondents 1 to 3 reiterated that considering the fact that there is no promotional avenue for the post of Laboratory Assistant, the Government granted Selection Grade and Special Grade in the higher scale of pay. The Grade Pay was fixed as one time measure. However, the said Grade Pay is applicable so long as the petitioner continue in the post of Laboratory Assistant and once he is promoted to the higher post, then his pay was protected in the higher post and he is not entitled to claim the Grade Pay attached to the post of Laboratory Assistant. This apart, after promotion to the post of Junior Assistant/Typist and Assistant and Superintendent, pay protection was given to the petitioner. Now, he has received the benefits attached to the higher post also. His promotion was effected even prior to 01.01.2006. Thus, he cannot now claim the Grade Pay attached to the post of Laboratory Assistant in a higher post, which is totally irrelevant and not permissible with reference to the Government Orders in this regard.

7.Considering the arguments, this Court is of the considered opinion that there is no dispute that the petitioner was appointed as Laboratory Assistant. Further, it is admitted that the petitioner was promoted to the post of Junior Assistant/Typist, Assistant and as Superintendent respectively. The petitioner was promoted to the higher post, even prior to 01.01.2006, when the pay commission was implemented. It is further admitted that as per G.O.Ms.No.63, dated 26.02.2011, the Scale of Pay, the Selection Grade and Special Grade Pay is fixed for the post of Laboratory Assistant. This apart, the post of Laboratory Assistant has no promotional avenues. Thus, a pay protection was given to all these cadres by the Government as one time measure. Therefore, after getting promotion, the very purpose of grant of Selection Grade and Special Grade became irrelevant. Thus, the petitioner has to go in the higher post either by way of promotion or through transfer of service and further, his pay is also protected in the promoted post and there is no reason for the petitioner to claim the benefit attached to the post of Laboratory Assistant. In other words, once the petitioner is promoted to the post of Junior Assistant/Typist and further promoted to the post of Assistant, he cannot claim the Grade Pay attached to the post of Laboratory Assistant, which was given by the Government as one time measure, considering the fact that there is no promotional avenue for the post of Laboratory Assistant. The very purpose and object of granting such a Special Grade of Pay would be defeated, in the event of continuing the said pay to the petitioner, who was already promoted to the higher post of Junior Assistant and Assistant. It is made clear that once the petitioner was promoted to the post of Junior Assistant/Typist and



Assistant, then, the very question of stagnation, does not arise at all as far as the petitioner is concerned. When there is no question of stagnation, grant of higher grade pay as applicable to the post of Laboratory Assistant cannot be claimed by the writ petitioner.

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8.The petitioner referred the Government Letter, dated 23.05.2011, which is a clarificatory letter. Further, the clarificatory letter cannot supersede the spirit of the Government Order passed in G.O.Ms.No.63, dated 26.02.2011. However, the said letter was further clarified by the Director of Collegiate Education in Letter Rc.No.44735/G3/2012, dated 27.02.2013 and the said clarification states that the Selection Grade and Special Grade Pay would be applicable only to the post of Laboratory Assistant.

9.Importantly, the Government, vide Letter No.4867/G2/2014-2, Higher Education (G2) Department, dated 05.06.2014, informed the Director of Collegiate Education that "such of those Laboratory Assistant who attained Selection Grade or Special Grade before 31.12.2005 and continue to work as Typist/Junior Assistant by transfer of service cannot draw pay fixed for the post of Laboratory Assistant whose revised scale of pay of Rs.5200-20200+Grade Pay Rs.2400 was fixed in the Selection Grade/Special Grade Scale of Pay of Rs.9300-34800+Grade Pay Rs.4,200 and Rs.9300-34800+Grade Pay Rs.4400".

10.The above clarification of the Government was informed to all the Regional Joint Directors and all the Principals of Government Arts and Science Colleges as well as the Colleges of Education, vide letter, dated 22.07.2014. The said letter is impugned in the present writ petition.

11.This Court is of the considered opinion that the Special Grade Scale of Pay was fixed to the post of Laboratory Assistant on the ground that there is no promotion for the post of Laboratory Assistant. In view of the fact that the petitioner in the present writ petition, after getting Selection Grade/Special Grade Scales of Pay in the cadre of Laboratory Assistant, has all been now working in different higher post, after getting promotion by transfer of service as Junior Assistant/Typist/Storekeeper and now further, promoted to the post of Assistant and Superintendent and drawing salary at a level, which is more than prescribed for the existing post. Under these circumstances, the impugned order is passed to prevent monetary loss to the State-Exchequer.

12.It is relevant that the Government letter No.4867/G2/2014, dated 05.06.2014, clearly stipulates that those who have reached the Selection Grade or Special Grade in the post of Laboratory Assistants and getting promotion as Typist/Junior Assistant/Storekeeper before 31.12.2005, are not eligible for the revised pay of Rs.9300+34800+Grade Pay Rs.4200/- in the Selection



Grade and Rs.9300-34800+Grade Pay Rs.4400 in the said Special Grade. When the Government clarified in Letter, dated 05.06.2014 in unambiguous terms that the Laboratory Assistant, who was already promoted to the post of Junior Assistant prior to 31.12.2005 is not eligible to draw the Special Grade Pay attached to the post of Lab Assistant, there is no reason to cater the said benefit even after getting further promotion to the post of Assistant and Superintendent.

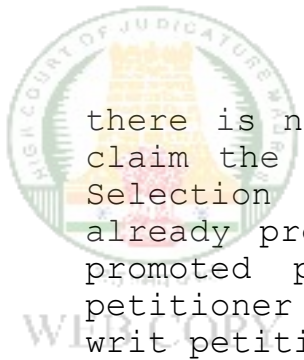
13.At the outset the petitioner, who was initially appointed as Laboratory Assistant was promoted by way of transfer of service to the higher post of Junior Assistant/Typist/Storekeeper even prior to 31.12.2005 i.e., before 01.01.2006 and further, promoted to the post of Assistant. The pay of the petitioner was protected in the promotional post at the time of promotion and he was receiving higher scale of pay, than that of the scale of pay attached to the post of Junior Assistant on his promotion.

14.In view of the fact that the scale of pay fixed for the post of Laboratory Assistant was higher than, the scale of pay fixed for the post of Junior Assistant during the relevant point of time, the pay protection was given by the Government as one time measure, considering the fact that he should not be deprived of pay on account of promotion. Such one time measure cannot be a precedent so as to claim the Grade Pay attached to the post of Laboratory Assistant, even after getting promotion, further to the post of Assistant.

15.It is brought to the notice of this Court that the petitioner had further received the revised Scale of Pay as per the 6th Pay Commission recommendations. Now, he is getting the Scale of Pay as applicable to the post, in which, he is working and therefore, the claim to grant grade pay attached to the post of Laboratory Assistant is undoubtedly unsustainable.

16.The learned counsel for the petitioner made a submission that some of the juniors to the petitioner are getting more pay, than that of the petitioner. It is needless to state that Fundamental Rules stipulates that if any junior is getting more pay, the senior can submit an application for grant of equivalent pay on par with the junior by following the procedures contemplated under the Fundamental Rules. In this regard, a comparative statement is to be filed and the authority competent have to follow the Rules in this regard. Thus, if the petitioner is aggrieved on account of the fact that his juniors are getting more pay, then he is at liberty to approach the competent authority for the purpose of enhancement of pay on par with his juniors.

17.However, this cannot be a ground to assail the impugned orders now passed. The impugned order is passed in accordance with the Government Order regarding the fixation of Scale of Pay and



there is no infirmity as such. The petitioner is not entitled to claim the Scale of Pay or the Grade Pay attached to the post of Selection Grade or Special Grade Laboratory Assistant as he was already promoted and is getting the Scale of Pay attached to the promoted post. This being the factum established, the writ petitioner is not entitled for the relief as such sought for in the writ petition.

18. Accordingly, this writ petition stands dismissed. It is made clear that if the petitioner is already retired from service and is a pensioner, then, recovery alone cannot be imposed from his pension or pensionary benefits. No costs.

Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)

MPK

To

1.The Principal Secretary,
Finance (PC) Department,
Fort St.George, Chennai - 600 009.

2.The Director of Collegiate Education,
College Road, Nungambakkam, Chennai - 600 006.

3.The Joint Director of Collegiate Education,
Madurai Region,
Madurai - 625 020.

+1 CC to M/s Mr.R.Subramanian, Advocate, in SR.No.26777.

+1 CC to Special Government Pleader SR.No.26611.

W.P. (MD)No.4252 of 2015

18.12.2020

(MA) CO

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